Auto West Collision, Auto Collision Services Centers Corporation and Serramonte Auto Plaza Body Shop, Inc. *and* International Association of Machinists & Aerospace Workers, District Lodge 190, Local Lodge 1414, AFL–CIO and Javier Hernandez. Cases 20–CA–28039 and 20—CA–28049

November 24, 1998

DECISION AND ORDER

BY MEMBERS FOX, HURTGEN, AND BRAME

Upon charges filed on September 24 and 29, 1997, the Acting General Counsel of the National Labor Relations Board issued an amended consolidated complaint on February 18, 1998, against Auto West Collision, Auto Collision Services Centers Corporation and Serramonte Auto Plaza Body Shop, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. The Respondent filed an answer.

Thereafter, on March 10, 1998, the Respondent entered into an informal settlement agreement which was approved by the Regional Director on March 13. The settlement agreement provided, inter alia, that the Respondent would pay backpay in the total amount of $49,400.60, plus interest, to the five discriminatees. The settlement provided that this amount would be paid in ten installment payments of $4940.06 each, which amount would be apportioned among the five discriminatees as set forth in the settlement. In addition, the settlment provided that:

> In consideration of the Board granting a time payment schedule, Respondent further agrees that, in the event of any non-compliance by failure to make required payments by certified or cashier's check, on the dates specified, or to cure any such failure within fourteen days of the specified payment date, the total amount of backpay shall become immediately due and payable. Thereupon, the Regional Director for the National Labor Relations Board may give notice of intent to file a motion for summary judgment seeking findings of fact and conclusions of law consistent with the Amended Consolidated Complaint (Complaint) and seeking a full remedy. Respondent agrees that after 14 days notice from the Regional Director of the National Labor Relations Board, on such motion for summary judgment by the General Counsel, Respondent's Answer to the instant Complaint shall be considered withdrawn. Thereupon, the Board shall issue an order requiring Respondent to show cause why said Motion of the General Counsel should not be granted. The Board may, without necessity of trial, find all allegations of the Complaint to be true, and make findings of fact and conclusions of law consistent with those allegations adverse to Respondent on all issues raised by the pleadings. The Board may also issue an Order providing full remedy, including immediate payment of backpay that has not yet been paid, plus any interest that has accrued on the unpaid backpay and including a remedial bargaining order if requested by the General Counsel. The parties further agree that a Board Order and U.S. Court of Appeals Judgment may be entered thereon ex parte.

The Respondent remitted the first five installment payments, but did not remit the sixth and seventh installment payments that were due on July 24 and August 24, 1998, respectively. By letter dated August 25, the Regional Director advised Respondent's counsel of the delinquency and that a Motion for Summary Judgment would be filed if the Respondent did not cure the delinquency by making the required payments. On September 9, counsel for the Acting General Counsel spoke with Respondent's counsel and again advised him that a motion for summary judgment would be filed if the payments were not received. Nevertheless, the Respondent failed to make any of the required payments since its fifth installment in July.

On October 16, 1998, the Acting General Counsel filed the instant Motion for Summary Judgment with the Board. Pursuant to the terms of the settlement agreement, the Acting General Counsel requests that the Respondent's answer to the amended consolidated complaint be considered withdrawn and that the Board issue an order requiring the Respondent to pay the total remaining amount of backpay due each of the five discriminatees under the terms of the settlement, and to also comply with certain other provisions of the settlement which have not been satisfied.[1]

On October 19, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

[1]In addition to the make-whole (backpay) relief, the settlement also required the Respondent to reinstate discriminatee Victor Nieves (the other four discriminatees waived reinstatement), to remove from its files any reference to the discharges, and to post a notice. The Acting General Counsel asserts that Respondent has complied with all of the nonmake-whole provisions of the settlement except for the provisions requiring Respondent to notify the discriminatees and the Region that it has removed any reference to the discharges from its files. The Acting General Counsel therefore requests that the Respondent be ordered to comply with the removal provisions, but does not request that the Board order the Respondent to comply with the remaining nonmake-whole provisions of the settlement, or that it include in the order any of the affirmative provisions normally included in Board orders remedying allegations of the type alleged in the amended consolidated complaint. Nor has the Acting General Counsel requested a remedial bargaining order pursuant to the terms of the settlement.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the amended consolidated complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the amended consolidated complaint will be considered admitted. Although, the Respondent initially filed an answer to the amended consolidated complaint, it subsequently entered into a settlement agreement which provided for the withdrawal of that answer in the event of noncompliance with the settlement, and such noncompliance has occurred. We therefore find that the Respondent's answer has been withdrawn by the terms of the settlement agreement, and that, as further provided in the settlement, all the allegations of the amended consolidated complaint are true.[2]

Accordingly, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Auto Collision Services Centers Corporation and Serramonte Auto Plaza Body Shop, Inc., corporations, with an office and place of business in Colma, California, have been engaged in the retail repair and servicing of automobiles.

At all material times, Auto West Collision, a business entity, with an office and place of business in Colma, California, has also been engaged in the retail repair and servicing of automobiles.

At all material times, Auto West Collision, Auto Collision Services Centers Corporation and Serramonte Auto Plaza Body Shop, Inc., have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; and have interchanged personnel with each other.

Based on the operations described above, Auto West Collision, Auto Collision Services Centers Corporation and Serramonte Auto Plaza Body Shop, Inc., are a single employer within the meaning of the Act.

During the calendar year ending December 31, 1997, the Respondent, in conducting its business operations described above, derived gross revenues in excess of $500,000, and purchased and received goods valued in excess of $5000 which originated from points outside the State of California.

During the calendar year ending December 31, 1997, Serramonte Auto Plaza Body Shop, Inc. (Serramonte Auto), in conducting its business operations described above, derived gross revenues in excess of $500,000, and purchased and received goods valued in excess of $5000 which originated from points outside the State of California.

During the calendar year ending December 31, 1997, Auto West Collision (Auto West), in conducting its business operations described above, derived gross revenues in excess of $500,000, and purchased and received goods valued in excess of $5000 which originated from points outside the State of California.

We find that the Respondent, Serramonte Auto, and Auto West are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Respondent and/or Serramonte Auto and/or Auto West, at the Colma facility:

About September 25, 1997, interrogated its employees about their union activities and the union activities of other employees and threatened to discharge its employee for refusing to reveal what had occurred at the Union meeting.

About September 30, 1997, solicited its employees' grievances and promised its employees medical benefits if the employees rejected the Union as their bargaining representative, created an impression among its employees that their union representatives were under surveillance, and informed its employees that it would be futile for them to select the Union as their bargaining representative by telling employees that the Respondent and/or Auto West would not have a union at its facility.

About the first week of October 1997, promised its employees medical benefits, accident/life insurance and bonuses if the employees rejected the Union as their bargaining representative.

About the dates set forth opposite their names, discharged the employees named below because they formed and assisted the Union and engaged in concerted activities and to discourage employees from engaging in these activities:

Victor Nieves	September 23, 1997
Cesar Rosales	September 23, 1997
Javier Hernandez	September 24, 1997
Gerardo Ortiz	September 24, 1997
Jaime Paredes	September 25, 1997

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent and/or Serramonte Auto and/or Auto West has been

[2] See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

interfering with, restraining, and coercing employees in the exercise of the rights guaranteeed in Section 7 of the Act in violation of Section 8(a)(1) of the Act. In addition, by discharging the named employees the Respondent has been discriminating in regard to the hire and tenure, or terms, or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, in accordance with the parties' settlement agreement and the Acting General Counsel's request in his motion for summary judgment,[3] we shall order the Respondent to: make the discriminatees whole by paying them the remaining amounts due under the terms of the settlement, plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 11173 (1987); remove from its files any reference to the discharges of the discriminatees; and notify the discriminatees and the Regional Director that its files have been removed.

ORDER

The National Labor Relations Board orders that the Respondent, Auto West Collision, Auto Collision Services Centers Corporation, and Serramonte Auto Plaza Body Shop, Inc., Colma, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their union activities and the union activities of other employees.

(b) Threatening to discharge employees for refusing to reveal what had occurred at the union meeting.

(c) Soliciting employees' grievances and promising them medical benefits if the employees rejected the Union as their bargaining representative.

(d) Creating an impression among employees that their union activities were under surveillance.

(e) Informing the employees that it would be futile for them to select the Union as their bargaining representative by telling them that the Respondent and/or Serramonte Auto and/or Auto West would not have a union at its facility.

(f) Promising employees medical benefits, accident/life insurance and bonuses if the employees rejected the Union as their bargaining representative.

(g) Discharging employees because they formed and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Victor Nieves, Cesar Rosales, Javier Hernandez, Gerardo Ortiz, and Jaime Paredes whole by making the following payments, plus interest, in the manner set forth in the remedy section of this decision:

Javier Hernandez	$3283.45
Victor Nieves	5428.20
Gerardo Ortiz	5428.20
Jaime Paredes	3441.10
Cesar Rosales	7119.35
TOTAL	$24,700.30

(b) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful discharges of Hernandez, Nieves, Ortiz, Paredes, and Rosales, and WE WILL, within 3 days thereafter notify them and the Regional Director for Region 20 in writing that this has been done and that the discharges will not be used against the discriminatees in any way.

Dated, Washington, D.C. November 24, 1998

Sarah M. Fox, Member

Peter J. Hurtgen, Member

J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3] See fn. 1, supra.